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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

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Commissioner

2008 NOV -4 A 11: 37

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

NOV -4 2008

DOCKETED BY

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In the matter of:

RANDIE BALBAS, a married man

and

LEILA BALBAS, a married woman,

Respondents.

DOCKET NO. S-20632A-08-0504

RESPONDENTS RANDIE AND LEILA
BALBAS' ANSWER

Respondents Randi Balbas ("Mr. Balbas") and Leila Balbas ("Ms. Balbas") (collectively "Respondents") submit their Answer to the Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, for Administrative Penalties and for Other Affirmative Action (the "Notice"). Respondents respond to the numbered paragraphs of the Notice as follows:

I.

JURISDICTION

1. Respondents deny the allegations in paragraph 1 of the Notice.

II.

RESPONDENT

2. Respondents admit the allegations in paragraph 2 of the Notice.
3. Respondents admit the allegations in paragraph 2 of the Notice.

III.

FACTS

7. The allegations in paragraph 7 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

8. The allegations in paragraph 8 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

9. The allegations in paragraph 9 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

10. The allegations in paragraph 10 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

11. The allegations in paragraph 11 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

12. The allegations in paragraph 12 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

13. The allegations in paragraph 13 of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.

14. Respondents admit the allegations in paragraph 14 of the Notice

IV.

**VIOLATION OF A.R.S. § 44-1841
(Offer or Sale of Unregistered Securities)**

15. Respondents deny the allegations in paragraph 15 of the Notice.

16. Respondents deny the allegations in paragraph 16 of the Notice

17. Respondents deny the allegations in paragraph 17 of the Notice.

V.

**VIOLATION OF A.R.S. § 44-1842
(Transactions by Unregistered Dealers or Salesmen)**

18. Respondents deny the allegations in paragraph 18 of the Notice

19. Respondents deny the allegations in paragraph 19 of the Notice.

VI.

**VIOLATION OF A.R.S. § 44-1991
(Fraud in Connection with the Offer or Sale of Securities)**

20. Respondents deny the allegations in paragraph 20 of the Notice.

21. Respondents deny the allegations in paragraph 21 of the Notice.

22. Respondents deny each and every allegation not specifically admitted.

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division.

Respondents reserve the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

No violation of the Arizona Securities Act occurred because the program at issue is not a security.

Second Affirmative Defense

Because the program at issue is not a security, the Arizona Securities Division has no jurisdiction to bring this action and the action should be dismissed.

Third Affirmative Defense

1 The Notice fails to state a claim upon which relief can be granted.

2 **Fourth Affirmative Defense**

3 The Division has failed to plead fraud with reasonable particularity as required by Rule
4 9(b) of the Arizona Rules of Civil Procedure.

5 **Fifth Affirmative Defense**

6 Respondents did not know and in the exercise of reasonable care could not have known of
7 any alleged untrue statements or material omissions as set forth in the Notice.

8 **Sixth Affirmative Defense**

9 Respondents did not act with the requisite scienter.
10

11 **Seventh Affirmative Defense**

12 Respondents did not employ a deceptive or manipulative device in connection with the
13 purchase or sale of any security.

14 **Eighth Affirmative Defense**

15 Respondents did not violate A.R.S. § 44-1991.
16

17 **Ninth Affirmative Defense**

18 Individuals purchasing the program at issue suffered no injuries or damages as a result of
19 Respondents alleged acts.

20 **Tenth Affirmative Defense**

21 Purchasers of the program at issue approved and/or authorized and/or directed all of the
22 transactions at issue.

23 **Eleventh Affirmative Defense**

24 If the program at issue was a security it was exempt from registration and/or sold in an
25 exempt transaction.
26
27

Twelfth Affirmative Defense

This proceeding before the Arizona Corporation Commission denies Respondents essential due process and is lacking in fundamental fairness. Respondents' constitutional rights will be further denied if they are not afforded trial by jury of this matter.

Thirteenth Affirmative Defense

The Division cannot meet the applicable standards for any of the relief it is seeking in the Notice.

Fourteenth Affirmative Defense

Respondents did not offer or sell securities within the meaning of the Arizona Securities Act.

Fifteenth Affirmative Defense

Respondents did not offer or sell or participate in the offer or sale of securities.

Sixteenth Affirmative Defense

Restitution is not an appropriate remedy.

Seventeenth Affirmative Defense

To the extent an award of restitution is appropriate, the Commission should use its discretion to reduce the amount, if any, Respondents must pay.


Eighteenth Affirmative Defense

Respondents allege such other affirmative defenses set forth in the Arizona Rules of Civil Procedure 8(c) as may be determined to be applicable during discovery.

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1 RESPECTFULLY SUBMITTED this 3rd day of November, 2008.

2 BADE & BASKIN PLC

3
4 By 
5 Alan S. Baskin
6 80 East Rio Salado Parkway, Suite 515
7 Tempe, Arizona 85281
8 Attorneys for Respondents

9 ORIGINAL and thirteen copies of the foregoing
10 filed this 3rd day of November, 2008 with:

11 Docket Control
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 COPY of the foregoing hand-delivered
16 this 3rd day of November, 2008 to:

17 Matthew J. Neubert
18 Director of Securities
19 Securities Division
20 Arizona Corporation Commission
21 1300 W. Washington Street, 3rd Floor
22 Phoenix, AZ 85007

23 COPY of the foregoing mailed
24 this 3rd day of November, 2008 to:

25 Wendy Coy
26 Securities Division
27 Arizona Corporation Commission
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007



balbas.acc/pld/answer.doc